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Nos. 471 · 472

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1934.

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION et al., Petitioners,

v.

BANKERS TRUST COMPANY and WILLIAM H. BIXBY, Trustees.

SUGGESTIONS IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

EDWARD J. WHITE,
Counsel for Trustees of Missouri Pacific Railroad Company, Debtor.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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Come now L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, and respectfully present to the Court that they are Trustees appointed by the United States District Court for the Eastern Division, Eastern Judicial District of Missouri, in the application of the Missouri Pacific Railroad Company, Debtor, for reorganization of its capital structure, being case No.

6935, in which cause the Judge of said court, on March 31, 1933, took jurisdiction of said cause (Tr. of Rec., pp. 5 and 7); and later said Court, in said proceeding, duly appointed said L. W. Baldwin and Guy A. Thompson Trustees of the railroads and property of the said Missouri Pacific Railroad Company, Debtor, which order, appointing Trustees, was entered June 22, 1933, and made permanent upon July 25, 1933 (Tr. of Rec., original page 84, printed 40; original 98, printed 46).

That of the property being administered by said Trustees, the railroad extending from a point adjacent to St. Louis, Missouri, to the City of Memphis, Tennessee, and from Carthage, Missouri, to Newport, Arkansas, is subject to the River and Gulf Divisions First Mortgage of the St. Louis, Iron Mountain & Southern Railway Company, which mortgage contains the so-called "Gold Clause," which is relied upon by the Trustees of said mortgage, the Bankers Trust Company and William H. Bixby, appellants, set up by said Trustees in this cause, who contend that by virtue of the gold clause in said mortgage the entire principal and interest of said mortgage indebtedness, secured by said mortgage, are payable in gold coin of the United States of the weight and fineness obtaining May 1, 1903.

That Trustees herein, in their answer to the intervening petition of said Bankers Trust Company and William H. Bixby, Trustees (Tr. of Rec., original 172, printed 77), have set up that said gold clause of said mortgage is illegal and

void because the said condition of said bonds and mortgage is in violation of the Joint Resolution of the House and Senate of the United States adopted June 5, 1933, providing that promises to pay dollars in gold coin could be satisfied by the payment of dollars in lawful money of the United States, and that said Joint Resolution of the Congress of the United States set aside and rendered nugatory said provision of said "gold clause" provisions of said mortgage and bonds, and, to enforce said provision against the Debtor or the Trustees in this proceeding, would result in increasing the amount due upon the principal and interest of said bonds over the legal amount which the holders of said bonds are entitled to recover.

That upon the hearing upon said petition of said Bankers Trust Company and William H. Bixby, Trustees, and the answers of said Trustees, L. W. Baldwin and Guy A. Thompson, it was shown that if said gold clause of said mortgage and said bonds should be enforced in all the mortgages of said Debtor, the Missouri Pacific Railroad Company, the bonded indebtedness of said company would be increased from a bonded indebtedness in principal amount of $430,000,000.00 to, approximately, $700,000,000.00 against the properties being administered by said Trustees, and that said gold clause in the mortgage of the said St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, was void, because contrary to said resolution of the Congress of the United States; and said United States District Court for the Eastern Division, East-

ern Judicial District of Missouri, Division No. 1, adjudged that said gold clause was void and in conflict with said resolution of Congress.

That this cause, therefore, involves an issue to said Trustees, L. W. Baldwin and Guy A. Thompson, and to said Debtor, Missouri Pacific Railroad Company, amounting to about $300,000,000.00, and also involves the validity of the Joint and Concurrent Resolution of the Congress of the United States above referred to.

That said cause, therefore, presents a question of the most far-reaching, public importance, as well as an extensive and important issue regarding the assets being administered by said Trustees and the administrative Judge in charge of the bankruptcy proceedings of the Missouri Pacific Railroad Company, Debtor.

Wherefore, said Trustees urge that the application for writ of certiorari, filed on behalf of the United States of America and the Reconstruction Finance Corporation et al. in this cause, should be granted.

Respectfully submitted,

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees, Mo. Pac. R. R. Co.,
Debtor.

By EDWARD J. WHITE,
Counsel for Trustees, Mo. Pac.
R. R. Co., Debtor.